

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
NORTHERN DIVISION**

OLIVIA Y., et al)	
)	
Plaintiffs)	
)	
v.)	CIVIL ACTION NO. 3:04-cv-251-HSO-FKB
)	
TATE REEVES, as Governor of)	
the State of Mississippi, et al.)	
)	
Defendants)	

**DEFENDANTS' RESPONSE AND OBJECTION TO
PLAINTIFFS' MOTION FOR
PAYMENT OF PLAINTIFFS' ATTORNEYS' FEES AND EXPENSES**

Defendants respond and object to Plaintiffs' Motion for Payment of Plaintiffs' Attorneys' Fees and Expenses ("Plaintiffs' Motion") as follows:¹

1. Plaintiffs' Motion was filed on February 4, 2021, along with their Memorandum of Law, seeking approval of the parties' agreement regarding Plaintiffs' attorneys' fees in the amount of \$40,859.62. While Defendants have agreed to the amount of fees to be paid (\$40,859.62), Defendants have not agreed that payment would be remitted within thirty (30) days from entry of an order and, therefore, object to Plaintiffs' request for an order that the fees be paid within thirty (30) days.

2. Defendants have never shown an unwillingness or reluctance to pay the agreed upon amount of fees. Instead, throughout the entire history of this litigation, Defendants have

¹ Due to the nature of this pleading, Defendants request relief from the requirement of filing a memorandum brief in support of Defendants' response.

acted in a cooperative fashion in the payment of the Plaintiffs' attorneys' fees.²

3. During the 2020 legislative session, a deficit appropriation was approved in the amount of \$424,175.00 – which covered the agreed upon amounts of attorneys' fees which were the subject of Plaintiffs' previously filed and pending motions for attorneys' fees [ECF No. 843, ECF No. 870, and ECF No. 883].³ *See* 2020 SB 2980, Lines 36 - 40, attached as Exhibit "A" to ECF No. 903. Already during the 2021 legislative session, a request has been submitted for a deficit appropriation to pay the currently pending attorneys' fees in the Olivia Y. litigation in the amount of \$129,679.46 which will cover the agreed upon fees of \$88,819.84 for the period of 1/1/20-6/30/20 [*see* ECF No. 903] and \$40,859.62 for the period of 7/1/2020 – 12/31/2020.

4. Defendants' and the Attorney General's position on paying Plaintiffs' attorney fees through legislative appropriation is in accordance with Mississippi law, which states that a "judgment or decree against the State shall not be satisfied except by an appropriation therefor by the legislature, and an execution shall not be issued against the State." *See* Miss. Code Ann. § 11-45-5.

5. In fact, Plaintiffs have recognized numerous times in the past the use of the deficit appropriation mechanism for payment of Plaintiffs' attorneys' fees. *See* ECF No. 633 (Plaintiffs' Unopposed Motion requesting approval of fees to "be paid upon appropriation by the Mississippi legislature"); ECF No. 596 (Plaintiffs' Unopposed Motion requesting payment "upon appropriation by the Mississippi legislature"); and ECF No. 581 (Plaintiffs'

² As demonstrated in Defendants' Amended Response and Objection to Plaintiffs' Motion for Attorneys' Fee and Expenses filed on November 18, 2019 [ECF No. 873], Plaintiffs' attorneys' fees have consistently been paid through deficit appropriations requested by, and made available to, the Attorney General's office. *See* Legislative Appropriation Bills 2008-2019, attached to ECF No. 873 collectively as Exhibit "A".

³ Plaintiffs' pending motions for attorneys' fees [ECF No. 843, ECF No. 870, and ECF No. 883] should all be deemed moot because those agreed upon attorneys' fees were received by Plaintiffs on July 16, 2020.

Unopposed Motion requesting payment “upon appropriation by the Mississippi legislature”). Likewise, the Court has recognized the use of the deficit appropriation mechanism for payment of Plaintiffs’ attorneys’ fees. *See* ECF No. 635 (Order granting fees with payment “upon appropriation by the Mississippi legislature”); ECF No. 598 (Order granting fees with payment “upon appropriation by the Mississippi legislature”); and ECF No. 583 (Order granting fees “upon appropriation by the Mississippi legislature”).

WHEREFORE, Defendants request that the Court deny Plaintiffs’ Motion insofar as it seeks payment of the agreed upon fees within thirty (30) days. Defendants further request the Court’s order approving the agreed upon attorneys’ fees direct that payment shall be made by Defendants to Plaintiffs’ Counsel in the agreed-upon amount of \$40,859.62, upon appropriation by the Mississippi legislature.

RESPECTFULLY SUBMITTED, this the 18th day of February, 2021.

TATE REEVES, as Governor of the State of Mississippi, ANDREA SANDERS, as Commissioner, Mississippi Department of Child Protection Services, and KIMBERLY WHEATON, as Deputy Commissioner of Child Welfare, Mississippi Department of Child Protection Services

By: /s/ Clint Pentecost

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